

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Western Wireless Corporation)	
Petition for Agreement with Redefinition of)	
Service Areas of Certain Rural Incumbent)	
Local Exchange Carriers in the State of)	
Minnesota Pursuant to 47 C.F.R. § 54.207(c))	

COMMENTS OF TDS TELECOMMUNICATIONS CORP.

TDS Telecommunications Corp. (TDS Telecom), parent company of rural local exchange carriers (RLECs) Mid-State Telephone Company (Mid-State) and KMP Telephone Company (KMP) (collectively, TDS RLECs), submits these comments in response to the Petition of Western Wireless Corp. (Western Wireless) for Agreement with Redefinition of Service Areas of Certain Rural ILECs in the State of Minnesota (Petition), including those of the TDS RLECs.¹ TDS Telecom urges the Commission to deny the Petition with respect to the TDS RLECs on the ground that, under the standards set forth in *Virginia Cellular*² and *Highland*

¹ In August 2004, the Minnesota Public Utilities Commission (MPUC) granted Western Wireless ETC status for certain portions of RLEC study areas it serves in the state. The MPUC proposed to redefine the service areas of certain RLECs, including the TDS RLECs, to permit Western Wireless to be designated as an ETC in only portions of the RLECs' study areas. Western Wireless then petitioned the Commission for approval of the MPUC redefinition decision. *Federal-State Joint Board on Universal Service, Petition of Western Wireless Corp. for Agreement with Redefinition of Service Areas of Certain Rural ILECs in the State of Minnesota*, Petition, CC Docket No. 96-45 (Sept. 15, 2004) (Petition).

² Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22, 2004) (*Virginia Cellular*).

Cellular,³ redefining the TDS RLECs' service area as proposed will allow Western Wireless to "cream-skim" and could undermine the TDS RLECs' ability to serve their study areas.

Alternatively, the Commission should delay consideration of the Petition until after the Commission has issued its order resolving the issues raised in the pending Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) relating to per-line support benchmarks for designating eligible telecommunications carriers (ETCs).⁴

I. THE PUBLIC INTEREST WOULD NOT BE SERVED BY GRANTING THE SERVICE AREA REDEFINITION REQUESTED IN THE PETITION

In *Virginia Cellular* and *Highland Cellular*, the Commission affirmed that decisions concerning redefinition of a rural telephone company's service area to allow a competitive ETC to serve only a portion of that area should continue to take into account the concerns of the Joint Board in (1) minimizing creamskimming⁵; (2) recognizing that the Telecommunications Act of 1996 places rural telephone companies on a different competitive footing than other local exchange carriers; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than the study area level.⁶ The Commission also provided additional guidance concerning the circumstances in which creamskimming concerns are implicated.

³ Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service Highland Cellular, Inc Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 04-37 (rel. April 12, 2004) (*Highland Cellular*).

⁴ Recommended Decision, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission's Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) (Recommended Decision). The FCC issued its Notice of Proposed Rulemaking seeking comment on the Recommended Decision in June 2004. Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) (Notice).

⁵ "Rural creamskimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company's study area." *Virginia Cellular* ¶ 32; *Highland Cellular* ¶ 26.

⁶ See *Virginia Cellular* ¶ 41; *Highland Cellular* ¶ 38.

To evaluate whether creamskimming concerns were implicated in a request to designate an ETC in select wire centers – and to redefine the RLEC service area – *Virginia Cellular* and *Highland Cellular* examined the potential creamskimming *effect* of the petitioner’s request to serve only selected wire centers within a rural telephone company’s service area. Specifically, the Commission examined both the population density of the wire centers in which the petitioner sought to be designated as an ETC and the disparity between the density of the designated wire centers and the other wire centers in the RLEC’s service area.⁷ The Commission relied on this comparative density information to determine whether designating the petitioner as an ETC in the specified wire centers – and redefining the RLEC’s service area to permit such designation – could potentially undermine the RLEC’s ability to serve its entire study area.⁸ In *Highland Cellular*, the Commission further noted that where the RLEC’s “study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities. This problem may be compounded where the cost characteristics of the incumbent and competitor differ substantially.”⁹ Accordingly, the Commission “reject[ed] arguments that incumbents can, in every instance, protect against creamskimming by disaggregating high-cost support to the higher-cost portions of the incumbent’s study area.”¹⁰

Before applying the *Virginia Cellular* and *Highland Cellular* “creamskimming” tests to the Petition, TDS Telecom suggests one slight modification to ensure that the tests reflect most accurately the cost characteristics of the relevant wire centers. Specifically, we

⁷ *Virginia Cellular* ¶ 35; *Highland Cellular* ¶¶ 29-31.

⁸ *Virginia Cellular* ¶ 35; *Highland Cellular* ¶ 32.

⁹ *Highland Cellular* ¶ 32.

¹⁰ *Id.*

respectfully suggest that the Commission examine *access line density* – calculated by dividing the number of access lines served by a wire center by the square mileage of the area served – rather than population density when evaluating the potential creamskimming effect of a partial ETC designation and related service area redefinition. In the experience of TDS Telecom, access line density reflects much more accurately the costs of serving a wire center than the density of the population in the area.

Applying this modified test to the Petition, the potential creamskimming effect of the partial designation and service area redefinition in the TDS RLEC service areas is apparent. The access line densities of the wire centers of the TDS RLECs are shown in the following table. The centers in which Western Wireless sought ETC designation are indicated in bold:

TDS RLEC	Wire Center	Access Line Density (lines/sq. mile)
KMP Telephone Co.	Kerkhoven	7.200
	Murdock	4.090
	Pennock	8.030
	Danube	4.756
Mid-State Telephone Co.	Spicer	52.381
	Sedan	4.099
	Terrace	4.429
	Brooten	7.407
	Sunberg	4.438
	New London	24.108
	Irving	11.319

As the table demonstrates, the disparity in the Mid-State wire centers is extreme. Western Wireless seeks to serve the two highest density wire centers in Mid-State's study area, with access line densities of 52.381 and 24.108 per square mile, respectively. By contrast, the aggregate density of Mid-State's other wire centers is 6.101. In the case of KMP, Western

Wireless has proposed serving the highest density wire center, while avoiding the lowest density one.

Even if the disparity in the densities of the wire centers Western Wireless seeks to serve is not motivated by an *intent* to engage in rural creamskimming, the *effect* on the TDS RLECs of limiting Western Wireless's ETC designation to high-density wire centers while excluding low-density wire centers is the same and could place the TDS RLECs at "a sizeable unfair advantage."¹¹ Indeed, the Commission expressly noted in *Highland Cellular* that even where a competitive carrier is simply seeking ETC designation in its own licensed service area, and thus is not "deliberately seeking to enter only certain portions of [rural telephone] companies' study areas in order to creamskim," "granting a carrier ETC designation for only its licensed portion of the rural study may have the same effect on the ILEC as rural creamskimming" and would be inconsistent with the public interest.¹²

Although Mid-State and KMP have disaggregated universal service support below the study area level, the Commission has acknowledged that disaggregation cannot always protect against the effects of creamskimming, particularly where the incumbent's wire centers exhibit highly variable population densities and therefore highly variable cost characteristics.¹³ These characteristics are present in the wire centers Western Wireless seeks to serve. As a proxy to demonstrate the variation in access line density across its wire centers, TDS Telecom calculated the access line density in each Census Block Group (CBG) within the wire centers in

¹¹ See *Highland Cellular* at ¶ 32; *Virginia Cellular* at ¶ 35.

¹² *Highland Cellular* ¶¶ 26-27.

¹³ *Highland Cellular* ¶ 32.

which Western Wireless has been designated as an ETC.¹⁴ The densities of the CBGs do not reflect exactly the densities within the wire centers because the boundaries of the CBGs do not correspond precisely with wire center boundaries (*i.e.*, part of a CBG may be in one wire center while another part is in another wire center). Nonetheless, we believe that the access line densities of the CBGs that are partially or entirely within the relevant TDS RLEC wire centers can serve as a useful indicator of how population and access lines are grouped within the wire centers.

An examination of the access line densities in the CBGs within the TDS RLEC wire centers in which Western Wireless has been designated an ETC shows significant variation in access line density across all four wire centers. In the Mid-State service area, there are nine CBGs in the New London wire center, with access line densities ranging from as high as 130.741 lines/sq. mile to as low as 9.892 lines/sq. mile. Of the six CBGs in the Spicer wire center, access line densities range from as high as 147.079 lines/sq. mile to as low as 26.055 lines/sq. mile. In the KMP territory, the four CBGs in the Pennock wire center have access line densities ranging from as high as 11.609 lines/sq. mile to as low as 2.321 lines/sq. mile. In the Danube wire center, the three CBGs have access line densities range from as high as 27.214 lines/sq. mile to as low as 2.861 lines/sq. mile. As these figures show, the TDS RLEC “study area[s] include[] wire centers with highly variable population densities, and therefore highly variable cost

¹⁴ Census Block Groups are established by the U.S. Census Bureau for purposes of compiling and analyzing census information. The CBG figures used here are from the 2002 Census.

characteristics,”¹⁵ making disaggregation less viable for reducing creamskimming opportunities.¹⁶

In sum, the redefinition of the TDS RLEC service areas sought in the Petition would be inconsistent with the public interest under *Virginia Cellular* and *Highland Cellular* because the redefinition would implicate creamskimming concerns and potentially undermine the TDS RLECs’ ability to serve their entire study areas. Accordingly, the Petition must be denied and referred to the MPUC for reconsideration of the underlying decision to designate Western Wireless as an ETC in only portions of the TDS RLEC study areas.

II. THE COMMISSION SHOULD NOT CONSIDER THE PROPOSED SERVICE AREA REDEFINITION UNTIL AFTER THE COMMISSION HAS RESOLVED THE PER-LINE SUPPORT ISSUES RAISED IN THE RECOMMENDED DECISION

The Commission is currently evaluating a number of proposals to revise the rules relating to High-Cost universal service support and the criteria and procedures for designating ETCs eligible to receive that support.¹⁷ One of the issues raised in the Recommended Decision

¹⁵ *Highland Cellular* ¶ 32.

¹⁶ Even where the wire centers within a study area do not exhibit highly variable population densities, disaggregation of universal service support does not fully protect against the potential harm caused to the incumbent by creamskimming. Although disaggregation and targeting of universal service support can ensure that rural telephone companies continue to recover the direct costs of serving their most high-cost wire centers (which are not subject to competition), certain cross-wire-center network and overhead costs may not be fully reflected in disaggregation plans. If universal service payments for lower-cost areas subject to competition eventually decline, those cross-wire-center costs (which will persist as the rural incumbent continues to maintain its network as the “carrier of last resort” throughout its service area) may not be fully recovered. Thus, disaggregation alone does not ensure that the public interest will be served by the designation of Western Wireless as a competitive ETC in the specified wire centers in the TDS RLEC service areas.

¹⁷ The Joint Board issued a request for comments on these issues in February 2003. Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission’s Rules Relating to High-Cost Universal Service Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7, 2003) (High Cost/ETC Notice). After considering numerous comments encouraging the Joint Board to adopt stricter ETC designation criteria, the Joint Board issued the Recommended Decision. The Commission released the Notice

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and Notice is the potential use of specific benchmarks, based on per-line support, to guide state and federal regulators deciding whether the public interest would be served by designating one or more competitive ETCs in a rural service area.¹⁸ As the Joint Board noted, per-line support can serve as a useful marker for determining whether the line density, population density, distance between wire centers, loop lengths and levels of investment in a particular rural service area can appropriately support the entry of one or more competitive carriers.¹⁹ Although the Joint Board was unable to reach a consensus to recommend specific per-line support benchmarks, the Recommended Decision does recognize the value of adopting per-line support benchmarks and recommends that the Commission solicit comment on whether such benchmarks merit consideration by the Commission.²⁰ The Commission did request comment on this issue,²¹ and a number of commenters supported either adopting rigid per-line support benchmarks or requiring state regulators to take per-line support amounts into consideration in determining whether the public interest would be served by designating an additional ETC in a rural service area.²²

To the extent that the Commission adopts some sort of per-line support benchmark or guideline, this could affect determinations of whether the public interest is served

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seeking comment on the Recommended Decision in June, and comments and reply comments have been filed. A majority of the comments support imposing additional criteria on petitioners seeking ETC designation.

¹⁸ Recommended Decision ¶ 44.

¹⁹ *Id.* ¶ 43. The Joint Board concluded that “[i]f the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund. Moreover, if the Commission were to cap per-line support upon entry of a competitive ETC and impose a primary-connection restriction, as discussed [in the Recommended Decision], designating an excessive number of ETCs could dilute the amount of support available to each ETC to the point that each carrier’s ability to provide universal service might be jeopardized. *Id.*

²⁰ *Id.*

²¹ Notice ¶ 2.

²² See, e.g., Comments of AT&T in CC Docket No. 96-45, at 31-35 (August 6, 2004); Comments of CenturyTel, Inc., in CC Docket No. 96-45, at 17-18 (May 5, 2003).

by redefining a rural service area to designate a CETC in only a portion of the rural carrier's study area. For example, a competitive carrier's request for ETC designation in a rural carrier's higher cost wire centers, while not implicating creamskimming concerns, could result in multiple carriers drawing support from the Universal Service Fund in circumstances in which the economies of scale are particularly unsuited to support multiple carriers. In those circumstances, it would be appropriate for the Commission to decline to agree with the proposed service area redefinition on the ground that designating a CETC in a wire center in which the per-line benchmark or guideline is exceeded would not serve the public interest.

Because of the potential impact of its decision in the rulemaking proceeding on this and other petitions to redefine rural service areas, the Commission should defer consideration of Western Wireless's request for agreement with the proposed redefinition of rural service areas in Minnesota until after the Commission has addressed the possibility of adopting per-line support benchmarks to guide decisionmakers considering designating competitive ETCs in rural service areas (and partial rural service areas). This would not entail a significant delay because the Commission must issue a decision on the Recommended Decision by February of next year.²³

²³ See 47 U.S.C. § 254(a)(2).

CONCLUSION

For the foregoing reasons, the Commission should reject the Petition and refer it to the MPUC for reconsideration of the decision to redefine the TDS RLEC service areas and designate Western Wireless as a competitive ETC in select wire centers. Alternatively, the Commission should delay consideration of the Petition until after the Commission has resolved the issues related to per-line support raised in the pending Joint Board Recommended Decision.

Respectfully submitted,

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A handwritten signature in blue ink, reading "Mary Newcomer Williams".

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